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2 I'm speaking in generally, I have  
3 been through this before, I didn't work on  
4 this specifically, but sometimes it takes  
5 several months to get them set up properly to  
6 get the receivables billed to satisfy them.

7 That's my read of what was happening  
8 here. It wasn't Midland wasn't following the  
9 plan. There was possibly some time necessary  
10 to get the servicer's systems adjusted  
11 accordingly pursuant to the plan, and once  
12 that happened, then, the payments were made  
13 and applied to the B note.

14 You can see that in the loan history  
15 report.

16 Q. Let's go with that theory.

17 Did that actually happen in this  
18 case or are you just speculating?

19 A. That's been my experience in dealing  
20 with external master servicer's. Many times,  
21 most times, there's a period where it takes  
22 to get your servicing system set up pursuant  
23 to a modification or a change in terms.

24 Whereas this was, for the B note.

25 Q. That would be information that your

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2 prior asset manager would know as well?

3 A. Right. Because they are the ones  
4 that work with Wells, in this case, to make  
5 sure their system reflected the plan.

6 Q. Is there anything in that CDC plan  
7 that reflects what you just said; that  
8 Midland shall be provided with a certain  
9 period of time in order to get their systems  
10 in compliance with the CDC plan payments?

11 A. I have not reviewed the plan looking  
12 for that. Again, it takes time to get  
13 systems modified.

14 Q. If we go back, go to the next page,  
15 you had previously testified in April of  
16 2013, Midland is following the waterfall, but  
17 there's not enough money to make the B note  
18 payment, correct?

19 A. Right. At the bottom there's a  
20 negative \$98,000.

21 Q. So, according to your attorney, the  
22 schedule that he prepared, and the schedule  
23 he sent to Centrum, he's saying the cash  
24 balance in the account in April of 2013 was  
25 \$300,000, more or less. After he applied all

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2 the payments under the waterfall, there's not  
3 enough money to make the B note payment,  
4 which caused the B note to go into default,  
5 right?

6 A. Right. There was insufficient cash  
7 flow.

8 Q. It's been your consistent position  
9 that the B note went interest default in  
10 April of 2013?

11 A. Yes. There was no payment made.

12 Q. But the problem is, if we look at  
13 Exhibit 66, which is the month of April 2013,  
14 the cash balance is not what your attorney  
15 reflected on the schedule of \$300,000, but  
16 rather the actual money in the account was  
17 \$560,000, correct?

18 A. I see that on the bank statement.

19 Q. Do you know why your attorney took  
20 this position on the schedule when there was  
21 actually money in the account?

22 Isn't the best thing to look at,  
23 sir, I know you're looking at your loan  
24 history, here's the money in the account, the  
25 bank statement?

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2 A. No, I don't think so, because that's  
3 a moment in time, whereas, it could be a  
4 timing issue as to how much money was  
5 available, when funds were posted.

6 Q. I'll get you the next one.

7 If you want to look at the month  
8 after, we can clarify the moment in time  
9 issue, right?

10 Here's May of 2013. And we can mark  
11 it.

12 (Whereupon, Bornheimer Exhibit 69,  
13 bank statement was marked, for  
14 identification, as of this date.)

15 Q. This is Bornheimer 69. Bornheimer  
16 66 is the March/April period of time, and  
17 Bornheimer 69 is, I give you the next month  
18 just in case we have an overlap like you just  
19 said.

20 The way I read this, sir, the  
21 average balance is a half million dollars in  
22 the account; do you read it the same way?

23 A. The average balance, yes.

24 Q. So, that average balance of money  
25 that's in the account is a lot more than



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2 \$27,000, right?

3 A. I see deposits of \$403,000. And  
4 deductions of \$622,000.

5 Q. But the deposits get added to the  
6 prior balance.

7 If you look, the bank statement  
8 shows your average balance?

9 A. Again, you're looking at moments in  
10 time as opposed to what the amount that had  
11 to be run through the waterfall was at  
12 another moment in time. I think, it's hard  
13 to compare these two.

14 The way I look at it is, in the loan  
15 history report, this is a nice analysis that  
16 the attorney has attached to the attorney's  
17 letter.

18 Q. We took your attorneys analysis and  
19 that's what our accountant did, he followed  
20 the same type of analysis.

21 My question to you is, when you look  
22 at a default, shouldn't you look at a moment  
23 in time?

24 A. When a payment wasn't made. The  
25 default wouldn't have occurred to the loan

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2 document --

3 Q. Right.

4 We should look at a moment in time  
5 when a payment default occurs, right?

6 A. Again, same answer.

7 We look when the payment wasn't made  
8 in accordance with the loan documents and the  
9 plan requirements.

10 Q. I agree, but isn't this a little bit  
11 of a different situation than when a borrower  
12 is controlling the money and the borrower is  
13 supposed to make payments?

14 In this situation, Midland is  
15 controlling the money, right?

16 A. Right.

17 Q. So, Midland has the money, has  
18 possession of the money, and is responsible  
19 for following the waterfall, right?

20 A. Right.

21 Q. I'm showing you bank statements in a  
22 moment in time when Midland has asserted in  
23 court a payment default occurred on this  
24 moment in time, right?

25 A. Right.

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2 Q. But, in that moment in time, the  
3 bank statements that Midland is controlling  
4 actually reflect more cash in the bank to  
5 make the payment; do you agree with that?

6 A. Again, it depends how many payments  
7 were supposed to come out of that bank  
8 account at this moment in time.

9 Q. But at that moment, we just did  
10 that. We'll do all of that again. We just  
11 did it.

12 In April of 2013 there was a monthly  
13 principle and interest debt payment due,  
14 right?

15 A. Right.

16 Q. That monthly principal debt service  
17 was \$27,792, or it's \$23,000, it's somewhere  
18 in the \$20,000 range; would you agree with  
19 me?

20 Sir, there's still an outstanding  
21 question; if you could answer my question?

22 MR. FELD: Give him a chance to  
23 look at the document.

24 MR. MANISCALCO: Okay.

25 (Whereupon, the record was read